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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6935

MARCEL YOUAKIM and LINDA YOUAKIM individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend, LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend, LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend, LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend, LINDA YOUAKIM, and all others similarly situated,

Plaintiffs-Appellants,

vs.

JEROME MILLER individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES of the STATE OF ILLINOIS,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF AND ARGUMENT FOR DEFENDANTS-APPELLEES

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BRIEF AND ARGUMENT FOR DEFENDANTS-APPELLEES

OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is reported at 374 F. Supp. 1204 (1974) and is reproduced in full in the Appendix at page 50.

JURISDICTION

These proceedings were instituted when the plaintiffs filed a class action in the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. §§ 1343 (3), (4), 1281 and 1284. Plaintiffs sought injunctive relief in accordance with their claim under the Civil Rights Act (42 U.S.C. § 1983), contending that the foster home provisions of the Illinois Child Care Act, Ill. Rev. Stat. 1971, ch. 23, §§ 2212.05, 2212.17 and 5005 were unconstitutional.

The three-judge district court, convened to hear this matter, treated defendants' Motion to Dismiss the action as a Motion for Summary Judgment under F.R.C.P 12(b) and granted defendants' motion for Summary Judgment on February 28, 1974. Plaintiffs filed their Notice of Appeal on April 23, 1974.

Plaintiffs have invoked the jurisdiction of this Court to review the decision of the three-judge district court by virtue of 28 U.S.C. §§ 1253 and 2281. This Court noted probable jurisdiction on March 17, 1975.

QUESTIONS PRESENTED

1. Whether the Illinois statutory foster care scheme which provides $105 per month in monetary assistance benefits to foster parents caring for unrelated children, while providing $63 per month in assistance to relatives caring for related children is consistent with the purpose and meaning of the Social Security Act and, therefore, the Supremacy Clause of the United States Constitution?

2. Whether the Illinois statutory foster care scheme complies with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

U.S. Const., art. VI;
U.S. Const., amend. XIV;
42 U.S.C. § 601;
42 U.S.C. § 602;
42 U.S.C. § 603;
42 U.S.C. § 605;
42 U.S.C. § 606;
42 U.S.C. § 608;
45 C.F.R. § 233.90(c)(1)(v) (1974);
45 C.F.R. § 233.90(c)(2) (1974);
45 C.F.R. § 233.110 (1974);
Ill. Rev. Stat. 1971, ch. 23, §§ 4-1 to 4-11;
Ill. Rev. Stat. 1971, ch. 23, § 2212.05;
Ill. Rev. Stat. 1971, ch. 23, § 2212.17;
Ill. Rev. Stat. 1971, ch. 23, § 5001;
Ill. Rev. Stat. 1971, ch. 23, § 5005;
Ill. Rev. Stat. 1971, ch. 37, § 701-2(1);
(See Supplement in back of this brief for reproduction of statutes.)

SUMMARY OF ARGUMENT

I. The Illinois statutory foster care scheme which distinguishes between relatives caring for related children and strangers who act as foster parents is consistent with the Social Security Act and the Supremacy Clause of the United States Constitution.

The basic AFDC program established by the Social Security Act (42 U.S.C. §§ 601-606) provides aid to needy children who live with their parents and certain close relatives, while the supplemental AFDC-FC program (42 U.S.C. § 608) provides aid to children who are removed by court order from the homes of these persons and placed in foster family homes or child-care institutions.

The distribution of public aid funds by the State of Illinois parallels the federal welfare program. Under Illinois law, essentially the same class of relatives designated in the Social Security Act is eligible for public aid under the state AFDC program, whereas AFDC-FC assistance is administered under a separate program which defines a "foster family home" as a residence which receives unrelated children. Since plaintiffs care for needy children who are related to them, they have received public assistance under the AFDC program rather than under the foster care program. This procedure was properly upheld by the three-judge district court which heard the case below.

A. As in *Dandridge* v. *Williams*, 397 U.S. 471, 25 L. Ed. 2d 491 (1970), the question of plaintiffs' eligibility to receive some public assistance is simply not involved. The defendant has not attempted to deprive plaintiffs or persons similarly situated from receiving public assistance, but, rather, has determined them to be eligible under AFDC. Once the federal requirement that all eligible per-

sons receive some aid is fulfilled, the federal statute grants broad discretion to the individual states regarding the amount of benefits to be paid to public aid recipients. The State of Illinois has determined that its citizens' standard of need under AFDC is approximately $63 per month, and 100% of this need is paid to recipients by the state. A higher amount has been allocated under AFDC-FC in order to provide an incentive to strangers to care for dependent children unrelated to them. This difference, however, does not affect plaintiffs' eligibility under the AFDC program.

B. The Social Security Act itself distinguishes between foster parents and related persons who care for a child. First, a higher dollar amount of assistance is allocated to foster home care under the federal statute. Secondly, throughout the basic AFDC provisions, parents and close relatives are consistently treated as one unit, while "foster care" and "child-care institutions" comprise another separate unit under the AFDC-FC provision.

While it is unquestionably the predominant purpose of the AFDC program, as set forth in § 601, to insure that whenever possible dependent children will be cared for in homes provided by close relatives, certain other sections clearly show that Congress has become increasingly responsive to the much broader concern of the care and protection of children generally. Section 606(b) is particularly pertinent in that it provides for "protective payments" to be made to other interested persons when the child's welfare is jeopardized by an irresponsible parent or relative. It also requires states which participate in the federal program to provide for foster care to remedy situations where the conditions in the child's home prove unsuitable. Appropriately, § 608 defines a dependent child as one who has been removed from the home of a relative by court order and who is subsequently placed in a foster home or

a child-care institution. Congress could not have intended to merely duplicate federal assistance which was already provided under AFDC to parents and close relatives of dependent children. Rather, the newer AFDC-FC program was meant to remedy those situations where related care for dependent children is either unavailable or inadequate by providing a less desirable but necessary alternative to care in the child's own home in the form of foster care.

C. The legislative history of the Social Security Act indicates that Congress intended the foster care program to function simply as a supplement to the regular AFDC program. Since the origin of the Social Security Act, AFDC payments have been administered under Title IV, whereas aid to foster children was first administered in a less structured fashion through a completely distinct program under Title V. It was only in 1961 that the states were given the option of bringing dependent children in need of foster care into the federally aided program under Title IV. This new legislation followed a recognition by Congress that while some home environments are contrary to the best interests of children, remedial action was not possible unless the states were granted additional funds in order to provide for care of the child in a foster family home when necessary. The Senate Committee also expressed the intent that individual states should determine the appropriate amount of aid to be granted to the providers of foster care.

Therefore, the Illinois practice of treating related persons separately from foster parents, and of granting a higher level of payments to foster home care, conforms to the underlying purpose and meaning of the Social Security Act.

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D. Since plaintiffs are related to the needy children for whom they care, the state has properly determined that they should not be regarded as foster parents under the federal welfare program. This Court has emphatically rejected the method of statutory construction which results in a presumption that because plaintiffs are not expressly excluded from AFDC-FC coverage under the federal statute, they are thereby included in its coverage. Under the preferred method of statutory interpretation, whereby words are given their ordinary meaning, foster parents are persons who offer care, nursing and rearing to children even though they are not related by blood. This definition was implicitly accepted by the Supreme Court in a recent case, as well as by the three-judge district court below. Even though the present position of HEW regarding foster care conflicts with this definition, it was nevertheless explicitly accepted by HEW in the past, both in the official regulations contained in C.F.R. and in a letter by HEW affirming the position of the State of Illinois that plaintiffs simply are not foster parents, and are consequently not entitled to foster care benefits under AFDC-FC.

Since the Illinois statutory foster care scheme is consistent with the Social Security Act and the Supremacy Clause of the United States Constitution, this Court should affirm the three-judge district court's entry of summary judgment for the defendants.

II. The Illinois statutory foster care scheme which provides monetary assistance to strangers caring for unrelated children at $105 per month while providing assistance of $63 per month to relatives caring for related children complies with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The three-judge district court properly employed the traditional "minimum scrutiny, rational relationship" standard of review to this case and found that the Illinois welfare scheme is based upon legitimate state purposes, and that the allocation of welfare funds made by the state bears a relationship to the legitimate purposes upon which the program is grounded. The district court recognized that the Illinois Department of Children and Family Services was created to protect and care for homeless dependent or neglected children and to promote their general welfare. Consistent with that purpose is making available as many foster homes as possible so that those children who cannot live with natural parents or relatives may have a foster home in which to live. The district court correctly found that payment of a premium to strangers caring for unrelated children, over and above the general assistance available to relatives caring for related children, would make the maximum number of foster homes available since a natural parent or relative is likely to care for a child out of a sense of family obligation, whereas a stranger has no such similar motivation. The district court logically concluded that it was reasonable for the State of Illinois to adopt a program designed to induce families who would not otherwise become foster parents to assume that role.

The district court also found a valid secondary state interest which is rationally related to the purposes of the Illinois welfare statutes. The payments which are the subject of this litigation are intended to subsidize care for children who have been adjudicated wards of the state. The district court recognized that there are many children in Illinois whose natural parents are deceased, who are cared for by relatives without having been adjudicated wards of the state. If plaintiffs' attack on the Illinois wel-

fare scheme is successful, relatives will have a financial inducement to have the related children they care for adjudicated wards of the state. Such a state of affairs is contrary to the best interests of the children involved and contrary to the valid state interest of encouraging relatives to care for related minors without having them adjudicated wards of the state. Therefore, the Illinois statutory foster care scheme does not violate the equal protection rights of the plaintiffs.

The plaintiffs erroneously argue for the application of a more stringent standard of equal protection review. Such a standard of review is not applicable here, since plaintiffs are not members of an inherently suspect class nor is a protected fundamental interest of plaintiffs involved. Under these circumstances a more stringent standard of equal protection review than the traditional "minimum scrutiny, rational relationship" test has no application.

Since the Illinois welfare scheme in question is consistent with the Social Security Act and complies with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, this Court should affirm the three-judge district court's entry of summary judgment for the defendants.

ARGUMENT

I.

THE ILLINOIS STATUTORY FOSTER CARE SCHEME IS CONSISTENT WITH THE PURPOSE AND MEANING OF THE SOCIAL SECURITY ACT, AND DOES NOT, THEREFORE, VIOLATE THE SOCIAL SECURITY ACT OR THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

Introduction

Like every other state in the Union, Illinois has chosen to participate in the Federal Aid to Families With Dependent Children welfare program (AFDC, 42 U.S.C. § 601 *et seq.*). Originating with the Social Security Act of 1935, this program provides aid to families with dependent children where such children are deprived of parental support because a parent is absent from the home, incapacitated or dead, and the children are living with either their natural parents or with certain relatives specified in 42 U.S.C. § 606.[1] In addition to this basic program, Congress, in 1961, extended the AFDC program to include dependent children of unemployed fathers (AFDC-E, 42 U.S.C. § 607), and at the same time, the AFDC-FC program was established (42 U.S.C. § 608) to provide aid to children who

---

1. Section 606(a) specifies the following relatives in addition to father and mother as being within the ambit of the AFDC program laid out in § 606: grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

were removed by court order from the homes of those relatives designated in § 606 and placed in foster family homes or in child-care institutions.

This case involves the interaction of the AFDC (42 U.S.C. § 606) and AFDC-FC (42 U.S.C. § 608) programs. Like AFDC, the federal welfare program providing aid for foster care (AFDC-FC) depends on a combination of federal and state funds, and is administered by the states under regulations promulgated by the Department of Health, Education and Welfare (HEW) pursuant to the statutory authority delegated to it by the Congress. The Supreme Court has emphasized on numerous occasions that while each state may refuse to participate in the federal program (including both AFDC and AFDC-FC), once a state decides to participate, it is mandatory that it maintain a system consistent with the Social Security Act. *Townsend* v. *Swank,* 404 U.S. 282, 30 L. Ed. 2d 448 (1971); *Rosado* v. *Wyman,* 397 U.S. 397, 25 L. Ed. 2d 442 (1970); *King* v. *Smith,* 392 U.S. 309, 20 L. Ed. 2d 1118 (1968). Therefore, as a participant in the AFDC and AFDC-FC programs, the State of Illinois, as well as every other participating state, has an obligation to disburse welfare funds in a manner consistent with the stated requirements of the federal welfare program, as well as its underlying purposes and policies.

In accordance with the Illinois administrative welfare scheme, the AFDC program is administered by the Illinois Department of Public Aid (Ill. Rev. Stat. 1971, ch. 23, §§ 4-1 to 4-11) while the AFDC-FC program is administered separately by the Illinois Department of Children and Family Services (Ill. Rev. Stat. 1971, ch. 23, § 5001 *et seq.*).

Under the AFDC program, needy children who are living with their parents or certain relatives specified in § 4-1.2,[2] are entitled to monthly assistance of approximately $63 while under the AFDC-FC program needy children who are living with unrelated foster parents (pursuant to Ill. Rev. Stat. 1971, ch. 23, §§ 2212.05 and 2212.17)[3] are entitled to monthly benefits of approximattly $105. Either group of needy children and the families with which they live may be entitled to additional monthly assistance, over and above their basic allotment, upon a showing of special need.[4]

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2. Section 4-1.2 (Ill. Rev. Stat. 1971, ch. 23, § 4-1.2) of the Illinois statute includes within the ambit of the basic AFDC program essentially the same class of relatives as provided for in § 606(a) of the Social Security Act. In addition to father or mother, § 4-1.2 of the Illinois statute specifies that the child or children must be living with one of the following relatives: grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, or other relative approved by the Department.

3. Section 2212.05 defines a "facility for child care" as "any person, group of persons, agency, association or organization . . . who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility. . . ." Section 2212.17 defines a "foster family home" as "a facility for child care in residences of families who receive no more than 8 children unrelated to them. . . ."

4. *See* DCFS manual which provides that a child living with a relative may be paid up to the full foster care rate of $105 upon a showing of need. (App. 36-37)

The dispute in this case involves plaintiffs' contention that they necessarily are included within the class of "foster parents" set out in the supplemental AFDC-FC program rather than the class of "relatives" set out in the basic AFDC program, even though they are related to the needy children for whom they care, and thus are covered under the regular AFDC program set out in § 606. Plaintiffs, therefore, claim to be entitled to monthly assistance of $105 per month rather than to the $63 per month allocated under the basic AFDC program. The defendants respectfully submit that the premise upon which plaintiffs' case is based is erroneous and that the AFDC and AFDC-FC programs as administered by the State of Illinois, which distinguish between relatives caring for related children and strangers who act as foster parents, are consistent with the requirements of both the Social Security Act and the long-standing policy of HEW.

A. Illinois Law Does Not Impose An Eligibility Standard For AFDC-FC Assistance Which Is Incompatible With The Social Security Act.

While not actually stated, plaintiffs' contention rests essentially upon § 602(a)(10) of the Social Security Act which requires that aid be promptly provided to "all eligible individuals." It is claimed by plaintiffs that the classifications established by the Illinois law, which exclude relatives from the definition of foster parents, "*deny eligibility* to a sub-group of foster children."[5]

5. It should be noted that plaintiffs inaccurately characterize themselves throughout their brief as a class of persons who are denied eligibility rather than as a class of persons who are eligible for assistance under the basic AFDC program provided for in 42 U.S.C. § 606. Plaintiffs were and presumably still are eligible for assistance under the basic AFDC program.

(Plaintiffs' brief, p. 19) (emphasis added) Allegedly, the "bar" to payment of AFDC-FC funds to children living with persons related to them is an attempt by Illinois to engraft "an additional condition of eligibility onto the federal scheme." (Plaintiffs' brief, p. 21; see also pp. 11-12). Several United States Supreme Court decisions are cited to support the position that "[t]he state cannot *deny assistance* to persons, like Plaintiffs, whom the federal law defines as eligible to receive it." (Plaintiffs' brief, p. 24) (emphasis added)

The defendants willingly acknowledge that every state must comply with the § 602(a)(10) requirement of prompt payment to all eligible persons. *Townsend* v. *Swank*, 404 U.S. 282, 30 L. Ed. 2d 448 (1971); *Lewis* v. *Martin*, 397 U.S. 552, 25 L. Ed. 2d 561 (1970); *Dandridge* v. *Williams*, 397 U.S. 471, 25 L. Ed. 2d 491 (1970); *King* v. *Smith*, 392 U.S. 309, 20 L. Ed. 2d 1118 (1968). Likewise, it is not questioned that eligibility for AFDC or AFDC-FC is to be determined by reference to the federal eligibility standards rather than by each individual state's preference. *Townsend* v. *Swank*, 404 U.S. 282, 30 L. Ed. 2d 448 (1971). The defendants maintain that the State of Illinois has properly applied the federal eligibility standards to the plaintiffs in this cause and appropriately found them eligible for AFDC in the amount of $63 per month rather than AFDC-FC in the amount of $105 per month. An examination of the federal eligibility standards and their application to plaintiffs clearly supports this claim.

Under § 601 of the Social Security Act, federal appropriations are authorized to enable each state to furnish financial assistance to "needy dependent children" and to the parents or relatives with whom those children are living. Sections 606, 607 and 608 define "needy dependent

children," and all persons included within those sections are eligible for assistance. Under § 606, a dependent child is one who is deprived of parental support or care by reason of the death, continued absence, or physical or mental incapacity of a parent; who is living with his father, mother, or certain specified relatives; and who is under 18 years of age, or under 21 and is a student. A similar standard of eligibility appears in § 607, except that the child covered under this section has been deprived of parental care or support because of the unemployment of his father, rather than by death, absence or incapacity of a parent as set out in § 606. Next, Section 608 defines a "dependent child" as one who would otherwise meet the requirements of § 606 or § 607 except that he has been removed by judicial order from the home of a relative designated in § 606 and has been placed in a foster home or in a child-care institution. If a child fits into any one of these categories, he is considered by federal standards an "eligible individual," entitled to share in federal welfare funds.

The defendants recognize that in numerous instances, the Supreme Court has struck down attempts by the states to exclude eligible persons from welfare benefits in violation of the Social Security Act. In *King* v. *Smith,* 392 U.S. 309, 20 L. Ed. 2d 1118 (1968) this Court struck down an Alabama statute which denied AFDC benefits to the mother of any child who cohabited with a man (substitute father) inside or outside of her home because the statute defined "parent" in a manner inconsistent with 42 U.S.C. § 606(a). Similarly in *Townsend* v. *Swank,* 404 U.S. 282, 30 L. Ed. 2d 448 (1971) an Illinois statute and regulation which denied AFDC benefits to children between the ages of 18 and 20 who attended colleges and universities were struck because they defined "institutions of higher education" in a manner inconsistent with federal law. The Court in *Carleson* v. *Remillard,* 406 U.S. 598, 32 L. Ed. 2d 352 (1972) struck a California statute which denied AFDC benefits to families in which the father was absent from the home on account of military duty as being inconsistent with the federal definition of "continued absence from the home" contained in 42 U.S.C. § 606(a). Most recently in *Van Lare* v. *Hurley,* —— U.S. ——, 44 L. Ed. 2d 208 (1975) this Court held invalid a New York regulation which resulted in a reduction or complete loss of an AFDC recipient's shelter allowance based upon a lodger's presumed but unproven contribution to the household, because it conflicted with the federal definition of "available income."

In contrast to these cases, the Illinois welfare scheme does not exclude the plaintiffs from eligibility for assistance, nor does it engraft an additional eligibility requirement on the federal scheme as suggested by the plaintiffs. The Illinois scheme simply parallels the federal one in determining whether an applicant for assistance is eligible under 42 U.S.C. § 606 (AFDC) or 42 U.S.C. § 608 (AFDC-FC). In this case, plaintiffs are eligible under § 606 rather than § 608—thus, there is no conflict with federal eligibility standards as presented by the above-cited decisions of this Court.

Plaintiffs' real contention, therefore, appears to concern itself with the *amount* of aid received rather than eligibility to receive aid. The Supreme Court has held in this regard that ". . . the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds." *Dandridge* v. *Williams,* 397 U.S. 471, 478, 25 L. Ed. 2d 491, 498 (1970). It is imperative to first note that nowhere does the federal statute require a participating state to provide any specific amount of aid, nor does it require the state to provide a greater amount of assistance to "fos-

ter parents" than to natural or related parents. While Congress has made additional funds available to states which choose to provide higher payments for foster care (§ 603(a)(1)(B)), section 602(a)(10) only requires that the state promptly *provide aid* to all individuals who are eligible. The Supreme Court has held that section to require no more than that all needy children receive *some* aid, and further, that "[s]o long as some aid is provided to all eligible families and all eligible children, the [Social Security Act] itself is not violated." *Dandridge* v. *Williams,* 397 U.S. 471, 481, 25 L. Ed. 2d 491, 499 (1970).

Secondly, once the requirement that all eligible persons receive some aid is fulfilled, the federal statute leaves the level of benefits and the determination of the "standard of need" of eligible families within its borders to the judgment of the state. *Id.* at 478-80, 25 L. Ed. 2d at 498-99. The authority given the states to set the level of benefits payable under their respective AFDC plans stems from § 601 of the Social Security Act, which states that the purpose of the federal AFDC appropriation is to enable each state to "furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State. . . .*"[6] *Id.* at 478, 25 L. Ed. 2d at 498. (Court's emphasis) Hence, "[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *King* v.

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6. "Congress was itself cognizant of the limitations on state resources from the very outset of the federal welfare program." *Dandridge* v. *Williams,* 397 U.S. 471, 478, 25 L. Ed. 2d 491, 498 (1970).

Smith, 392 U.S. 309, 318-19, 20 L. Ed. 2d 1118, 1126 (1968). *Jefferson* v. *Hackney,* 406 U.S. 535, 541, 32 L. Ed. 2d 285, 293 (1972).

Plaintiffs' contention, therefore, that "[t]he child has a *right to full State support* adequate to meet his needs" and impliedly that failure to provide such support violates the Social Security Act, is without an authoritative basis. (Plaintiffs' brief, p. 11) (emphasis added) A citizen has never had an inherent right to complete fulfillment of his needs by the government. (*See Jefferson* v. *Hackney,* 406 U.S. 535, 32 L. Ed. 2d 285 (1972); *Dandridge* v. *Williams,* 397 U.S. 471, 25 L. Ed. 2d 491 (1971)). The legislative history of the Social Security Act makes it clear that federal participation in state welfare programs stemmed precisely from the fact that the states were unable to even approach a level of assistance equal to individual needs. (*See* S. Rep. No. 628, 74th Cong. 1st Sess. 17-19 (1935)) Presently, as in the past, a state can altogether refuse to participate in the federal welfare program, and thus deprive its citizens of a share in these federal funds. Again, even by participating, there is no requirement that the state fully meet the needs of its citizens. The Supreme Court has noted with approval the various methods by which the states have chosen to meet the needs of its less fortunate citizens:

> Some States provide that every family shall receive grants sufficient to meet fully the determined standard of need. Other States provide that each family unit shall receive a percentage of the determined need. Still others provide grants to most families in full accord with the ascertained standard of need, but impose an upper limit on the total amount of money any one family unit may receive.

Dandridge v. *Williams*, 397 U.S. 471, 473, 25 L. Ed. 2d 491, 495 (1970).[7]

The State of Illinois has determined that its citizens' standard of need is approximately $63 per month. The state pays 100% of need, so that each eligible person receives the full $63 amount.[8] The fact that plaintiffs find this level of benefits inadequate to meet their particular needs does not provide a sound basis for arguing that the Illinois statute conflicts with federal law. Nor is a conflict presented because the state has deemed it necessary to provide larger payments than this minimum level to a group of persons (unrelated foster parents) who otherwise would have no incentive to care for dependent children. In *Ramos* v. *Montgomery*, 313 F. Supp. 1179 (S.D. Cal. 1970), the State of California set $48 per month as the minimum amount of AFDC assistance to be provided to eligible individuals. However, where a dependent child was placed in a foster home, that home was eligible to receive a higher payment of $105 for foster care. The district court held that the pro-

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7. In *Dandridge*, the recipients all had large families. Their standard of need as computed by the state substantially exceeded the maximum grants that they actually received under the state welfare program. The Court concluded that the state regulation was permissible under federal law.

8. As previously noted, any recipients, like plaintiffs, are eligible to receive a higher amount based upon a showing of special need. *See DCFS* manual (App. 36-37)

vision permitting the larger payment was not contrary to federal law.[9] This decision of the district court was subsequently affirmed by the United States Supreme Court. (400 U.S. 1003, 27 L. Ed. 2d 618 (1971)).

In summary then, plaintiffs are not denied eligibility under the AFDC program by the Illinois welfare scheme but rather are determined to be eligible for assistance as relatives caring for "needy dependent children" as set out in 42 U.S.C. § 606. While it is true that the assistance levels provided in this program result in the minimum $63 per month payments, whereas the levels for unrelated foster care permit higher payments of $105 per month, this difference neither denies plaintiffs eligibility under the AFDC program nor does it conflict with the Social Security Act.

B.

The Plain Meaning Of The Social Security Act Indicates That Congress Intended To Provide AFDC Assistance To Needy Children Cared For By Relatives, Such As Plaintiffs, Through § 606 Rather Than Through The Foster Care Program Contained In § 608.

By isolating certain words ("any individual") and certain sections (608(b); last paragraph of § 608) of the AFDC provisions, plaintiffs reach the mistaken conclusion that the Social Security Act mandates the granting of full AFDC-FC benefits to children living in homes maintained by relatives. (Plaintiff's brief, pp. 20-22) However, in in-

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9. While the determination by the State of Illinois to make higher payments, following a court order, to strangers than to relatives who care for children could conceivably raise a constitutional question of equal protection (see *Townsend* v. *Swank*, 404 U.S. 282, 30 L. Ed. 2d 448 (1971)), it in no way affects plaintiffs' eligibility to receive assistance so as to conflict with the Social Security Act.

terpreting a statute, the Court is not guided by a single sentence or member of a sentence, but must look to the provisions of the whole law, to its object and policy. *Philbrook* v. *Glodgett,* ——U.S.——, 44 L. Ed. 2d 525, 532-33 (1975); *Richards* v. *United States,* 369 U.S. 1, 11, 7 L. Ed. 2d 492, 499 (1962).

Accordingly, the three-judge district court which decided the case below determined that, far from being inconsistent with the federal welfare scheme, the Illinois statutory scheme implementing AFDC "in general seems to parallel it." *Youakim* v. *Miller,* 374 F. Supp. 1204, 1210 (N. D. Ill. 1974). The court based this determination on two factors: (1) the federal statute makes the same classification as the Illinois statute, in that the federal statute authorizes aid to the natural parents and relatives of dependent children in one section (42 U.S.C. § 606), and aid to foster parents in another section (42 U.S.C. § 608); and (2) that, like the Illinois statute, the federal plan allocates more money to foster care payments than to regular AFDC payments. (Citing § 603(a)(1)(B); *Ramos* v. *Montgomery,* 313 F. Supp. 1179, 1182 (S. D. Cal. 1970).

Since § 603(a)(1)(B) clearly authorizes greater money payments for foster care, the district court's determination in this regard is correct. The allocation of higher funds was first made in 1967, following a recognition by Congress that "[f]oster care for children is relatively costly, and States have reported that they cannot finance it without some additional Federal help." (S. Rep. No. 744, 90th Cong., 1st Sess. (1967) U.S. Cong. & Adm. News V. 2. 3000) The Senate Committee stated that "[f]ederal sharing will be possible in payments up to $100 a month . . . for children in foster care," (*Id.* at 3001) in order to provide "more favorable Federal matching . . . for foster care for children *removed from an unsuitable home* by court order." *Id.* at

2837-38. (emphasis added) It should be noted once again that § 608(a) defines a foster child as one who has been *removed from the home of a relative* by a judicial determination that continuation therein would be contrary to the welfare of the child. Further comments of the Senate Committee are enlightening:

> The committee believes that the AFDC program *already offers* an opportunity for States to receive Federal financial assistance in the cost of care for many children who have no parents or who are not able to live with their parents. Under AFDC, children are eligible for assistance only if they are living with one or more specified relatives. . . . Federal sharing is available to reimburse the relative for the cost of providing a home for the child. . . .
>
> Under the committee bill, Federal funds will be available on a more liberal basis *than for the basic program* [which includes relatives caring for an indigent child] out of a recognition that foster family care is more costly than care in the child's home. . . . These liberalizations will be of material assistance to States and localities and will facilitate plans being developed for children based on the need of the child rather than the fiscal condition of the local government. *Id.* at 3001-02.

It is evident from these comments that Congress intended to treat the foster care program separately and more favorably than the regular AFDC program, which has included related care since the inception of the Social Security Act in 1935. Consequently, the district court's interpretation that the federal statute classifies parental and related care separately from foster care is also correct.

Even a cursory examination of the AFDC provisions reveals that the terms "parent" and "relative" are consistently used as one unit, while the terms "foster care" and "child-care institutions" regularly appear together as

another separate unit in § 608. As noted above, §§ 601 through 606 constitute the basic AFDC program; § 607 was later added to extend AFDC to reach children of unemployed fathers, and § 608 was added to extend AFDC to children being cared for in the homes of persons unrelated to them or in child-care institutions. The purpose of the basic program, as stated in § 601, is to help maintain and strengthen family life by encouraging the care of dependent children in the homes of their parents, or alternatively, in the homes of relatives. The subsequent sections pertaining to AFDC provide the mechanism by which this goal is to be achieved. It is noteworthy that each section regards certain relatives on an equal basis with the natural parent.

For example, § 602(a)(7) provides that the state agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children; § 602(a)(19) provides that every individual receiving assistance must register for manpower services, training or employment, unless such individual is a mother or other relative of a child under the age of six who is caring for the child; § 605 provides for counseling and guidance to relatives who are unable to manage the use of welfare payments for the benefit of the child; § 606(a) identifies those relatives included in AFDC, and § 606(c) defines the term "relative with whom any dependent child is living." There is no question that natural parents and close relatives conceptually constitute one complete category of AFDC recipients.

Section 606(b) is especially pertinent because, in defining the term "aid to families with dependent children," it reflects a recognition by Congress that while the home of a parent or relative remains the ideal environment for the child, the difficulties sometimes encountered in maintaining and strengthening "family life" require other alternatives.

Section 606(b) provides three important safeguards for the protection of the child: first, a number of precautions are directed at keeping the child in the home of a parent or relative, by requiring state efforts to make such home suitable for the proper care of the child; second, the section provides a unique but partial remedy in the form of "protective payments" for situations where the child's welfare is jeopardized; and third, the section points to the more drastic measure of removal from the home where the goals and safeguards of § 606(b) fail.

Under § 606(b) the term "aid to families with dependent children" means money payments, as well as medical or remedial care in behalf of a dependent child. By amendment in 1950, an adult relative caring for a dependent child also became eligible for these benefits. (§ 606(b)(1). *See* S. Rep. No. 165, 87th Cong. 1st Sess. (1961) U.S. Cong. & Adm. News V. 2. 1723). In 1962 "protective payments" were instituted (§ 606(b)(2)) to give the states more flexibility in dealing with the misuse of funds by an incompetent or incapable parent or relative. (S. Rep. No. 1589, 87th Cong. 2nd Sess. (1962) U.S. Cong. & Adm. News V. 1 1955). This new concept in public assistance allows payments to be made to other interested or concerned individuals to insure that the child rather than an irresponsible parent or relative receives the benefit of assistance, or otherwise provides direct vendor payments for food and other services where it is determined that the cash payments to the parent or relative would be detrimental to the welfare of the child. *Id;* S. Rep. No. 744, 90th Cong., 1st Sess. (1967) U.S. Cong. & Adm. News V. 2. 2837.

The new provision contains several limitations — it applies only to a state whose welfare plan provides for a determination by the state agency that payments in this form are necessary because the relative is so unable to manage funds that it would be contrary to the child's wel-

fare to make the payments to such relative (§ 606(b)(2)(A)); it requires special efforts to improve the ability of the relative to manage the funds (§ 606(b)(2)(B)); and it calls for periodic review to determine whether payments in this form are still necessary, with provision for judicial appointment of a guardian or legal representative if the need for payments to another interested individual continues beyond a specified period (§ 606(b)(2)(C)). Finally, and most significantly, the state plan must additionally provide for aid in the form of foster care (§ 606(b)(2)(D)) in behalf of a child described in § 608 — one who has been *removed* from the home of a relative and who is placed in a foster family home or child-care institution, following a court order that continuation in the home of the relative would be contrary to the welfare of such child. Again, § 606(b) leaves no doubt that the federal statute distinguishes between foster parents and related persons who care for a child.

As previously indicated, § 606(b) defines the term "aid to families with dependent children." Section 608(b) extends that definition by providing that the term "shall, notwithstanding section 606(b) . . . *include also* foster care in behalf of a child described in paragraph (a) of this section —(1) in the foster family home of any individual . . . or (2) in a child-care institution". Plaintiffs mistakenly emphasize the word "any" in the above-quoted section and erroneously conclude that "[n]o homes are excluded" (Plaintiffs' brief, p. 22) from assistance under § 608. It is plain, however, that by using the words "include also," Congress intended to extend the AFDC program from related care which was already covered under § 606 to child care in a foster home by an unrelated person. This section likewise manifests the intention of Congress that assistance is to be provided for foster care whether the care is administered in the home of an individual, or in a child-care institution. It is absurd, therefore, to conclude as plaintiffs do that Congress, by using the word "any" before "individual," intended to extend coverage to a group of persons (relatives caring for needy children) who were already covered by § 606. The only reasonable interpretation of § 608 is that it extends AFDC assistance to a group definitely not previously covered, i.e. unrelated persons caring for needy children. No other interpretation is logically possible.

Furthermore, the home of *any* individual providing foster care will not necessarily be entitled to public aid. Section 608(a)(4) clearly limits eligibility to those foster homes receiving a child removed from the home of a relative by court order who was already a recipient of AFDC in the home of a relative when the court issued its order, or who would have been eligible for aid if an application had been made on his behalf. Therefore, plaintiffs' assertion that "any" individual providing foster care is entitled to benefits, is literally inaccurate.

All of the sections of the AFDC provisions discussed above, and particularly § 606(b) when examined in reference to § 608, leave little doubt that both parental and related home care are regarded in the federal statute as the most desirable means of protecting the child, whereas "protective payments," foster home care, and institutional child-care are separate remedies, or necessary alternatives, when conditions in the child's own home prove unsuitable. This interpretation finds support in the literal language of the Social Security Act.

C.

The Legislative History Of The Social Security Act Illustrates The Congressional Intent To Create A Separate Foster Care Program Distinct From The Regular AFDC Program.

Since its inception, the Social Security Act has clearly distinguished federal aid aimed at keeping a child in the home of a parent or close relative from that granted to "homeless" children residing in foster homes. First, under Title IV, cash grants were made primarily to female heads of families who were widowed, divorced, or deserted, in order to keep young children with their mothers in their own homes. (S. Rep. No. 628, 74th Cong. 1st Sess. 17 (1935)) This was recognized as the least expensive and most desirable method for meeting the needs of these families yet devised. *Id.* Also under Title IV, cash payments were made to certain relatives of a needy child, since a "dependent child" was then, as now, defined as one living with a near relative in a residence maintained by such relative as his own home. *Id.* at 36. At the same time, Congress gave somewhat limited notice to another separate group of needy children, and provided for them in a completely distinct program under Title V:

> Another large group of children who stand in great need of protective measures are the homeless and neglected children. There are in this country approximately 300,000 dependent and neglected children, three-fifths of whom are cared for *in institutions,* and the remainder *in foster homes.* . . . [T]hese children "are in many respects the most unfortunate of all children, as their lives have already been impaired. To repair these damaged lives, as far as possible, and to keep these children from becoming a permanent burden to society, child-care services have been established in

> most urban centers, but in less populous areas they are exceedingly limited or nonexistent." . . . To stimulate the development of these badly needed child-care services, . . . a small amount of Federal aid (which does not have to be matched) is *authorized in title V.*

S. Rep. No. 628, 74th Cong. 1st Sess. 19 (1935) (emphasis added)

For over twenty-five years these two programs existed separately. In 1961, however, it was recognized that even though the objective of the federal welfare program is to provide cash assistance for needy children in their own homes, that is, in the home of a parent or close relative,

> there are some home environments that are clearly contrary to the best interests of these children. . . . Often, however, remedial action on behalf of the child was not possible. We believe that this undesirable situation could be avoided, in many instances, if assistance under this program were available for the care of the child in a foster family home when such care is necessary.

(S. Rep. No. 165, 87th Cong. 1st Sess. (1961) U.S. Cong. & Adm. News V. 2. 1721) The Senate Committee noted that while federal funds available through child welfare services to states under Title V were being used for foster care of children to a limited extent, a lack of financial resources had hindered the development of the most suitable care for children who had to be cared for outside their own home. *Id.* As a result, the new bill creating the AFDC-FC program allowed the states the option of bringing needy dependent children under the federally aided program, where a court of competent jurisdiction found that the children were not receiving proper care and protection in their own homes. The new provision gave the responsibility for the placement and care of such children to the state agency which was admin-

istering Title IV. *Id.* at 1722. It applied only to children "removed from their own homes, or the homes of close relatives, on or after May 1, 1961," to insure that federal participation would go to the "extension of foster family care." *Id.* Further, it applied only to children who had been eligible for assistance in their own homes, or the homes of one of the specified relatives. *Id.* at 1721-22. Payments were to be made on behalf of needy children "to the providers of foster care *according to State standards* as to the appropriate amount needed for such care." *Id.* at 1721. (emphasis added)

In explaining the new provision, the Senate Committee stated:

> The foster care provisions in your committee's bill have been designed, insofar as possible, to safeguard the rights of the child and his parents or relatives. No one takes lightly the severance, even for a brief period, of the ties between a child and parent, or somebody closely related to him. *At the same time,* an effort has been made to write into the law provisions which would stimulate and assist the States in the *protection and care of children.*

Id. at 1722. (emphasis added) It should be noted that plaintiffs have used a part of this statement in their brief completely out of context by ending the Committee's statement with the words "closely related to him." (Plaintiffs' brief, p. 32) The rest of the paragraph must be read along with the section quoted by plaintiffs or the meaning of the passage becomes distorted.[10] While Congress recognized

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10. Plaintiffs apparently ignored the sentence which reads: "At the same time, an effort has been made to write into the law provisions which would stimulate and assist the States in the protection and care of children," because

that the strengthening of family ties is indeed important, the statement quoted above also reflected that Congress' paramount purpose was to "assist the States in the protection and care of children." Further, the statement refers directly to certain precautions contained in § 608(f), to which the states would have to comply if they wished to take advantage of the new foster care program. Among these are provisions for periodic review of the necessity for the child's being in a foster family home or child-care institution; for assurance that the child is receiving proper care in the foster home; and for making possible services designed to improve the conditions in the home from which the child was removed, or to otherwise make possible his being placed in the home of a relative. While it is true that a policy exists that "children who cannot live with their parents should live with relatives," (Plaintiffs' brief, p. 32) it is also obvious from § 608(f) that once a child is returned to his parents or otherwise placed in the home of a relative, he is no longer considered to be receiving foster care.

The new provision for foster care became a permanent feature of the federal welfare law in 1962. At that time, the Senate Committee noted that a number of states had used the provision and that others intended to do so, since it had given the states an alternative to leaving children in unsuitable homes or caring for them elsewhere without federal participation in the cost. (S. Rep. No. 1589, 87th Cong. 2nd Sess. (1962) U.S. Cong. & Adm. News V. 1. 1954-55).

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this statement interferes with plaintiffs' contention that, "the Act *must* be administered to maintain and strengthen family ties . . ." which plaintiffs consider as the "underlying theme of the entire program of aid to dependent children." (Plaintiffs' brief, p. 32) (emphasis added)

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In 1967, Congress amended the foster care provision to provide more favorable federal matching, and to broaden eligibility for foster care for children removed from an unsuitable home by court order. (S. Rep. No. 744, 90th Cong. 1st Sess. (1967) U.S. Cong. & Adm. News V. 2. 2837-38). The concept of broadened eligibility does not, however, pertain to the inclusion of related persons in the foster care program. Rather, the broadened eligibility resulted from the removal by Congress of the restriction that in order for a state to receive any federal matching funds, the children must be recipients of AFDC when the court issues its order. The new basis for eligibility is now contained in § 608(a). The comments made by the Senate Committee at the time of removing the old restrictions are quoted at length because they produce the sound conclusion that then, as before, Congress intended a distinction between foster care and related care:

> There is some evidence that courts may be reluctant to place a child in foster care because Federal funds are not available (and the cost of the care must come out of local funds in many areas) unless the child is in the home of a specified relative. The proposed change would make the cost of caring for children in foster care subject to Federal sharing if the child has been placed in foster care by a court order (if the child is removed from the home of a relative as a result of a judicial determination that continuation in such home would be contrary to his welfare) and if the child would have been eligible for aid under the AFDC program if an application had been made on his behalf. Also included are children placed under court order who had been living with one of the specified relatives enumerated in the law within 6 months and would have been eligible upon application for AFDC if he were living with such relative and were removed from the home of such relative by order of the court. This latter group

> would include some children already in foster care at the time of this legislation and who, except for this provision, would not be eligible because they had already been removed from their homes. Temporary plans may be needed, for example, for children both of whose parents are killed in an accident and for whom the court does not take immediate jurisdiction. The child *need not live with a relative* and may be in a *foster family home or in a voluntary institution* at the time the court makes its decision. S. Rep. No. 744, 90th Cong. 1st Sess. (1967) U.S. Cong. & Adm. News V. 2. 3001. (emphasis added)

The foregoing forcefully demonstrates that the legislative history and plain meaning of the Social Security Act indicate that Congress intended a distinction between foster care and related care. It is respectfully submitted that since the Illinois scheme simply parallels the federal one, it cannot be intelligently argued that Illinois' treatment of relatives caring for needy children is incompatible with the Social Security Act.

D.

The Plaintiffs, Who Are Related To The Needy Children For Whom They Care, Are Simply Not Foster Parents Within The Ambit Of The AFDC-FC Program Provided For In § 608.

From both the language of the federal statute pertaining to AFDC and its legislative history, it is clear that the term "related foster parent" is a misnomer for federal welfare purposes. Plaintiffs insist that they must be included within the definition of "foster parent" because they have not been specifically excluded by the federal statute —"Unless the Defendants can show where the plain words or legislative history of the Social Security Act *specifically authorizes the denial* of AFDC-FC payments . . . the scheme must fail." (Plaintiffs' brief, p. 24; also p. 15-

16) (emphasis added). This method of statutory construction has been emphatically rejected by the Supreme Court:

> Several of the courts that have faced this issue have read King, Townsend, and Carleson, supra, to establish a special rule of construction applicable to Social Security Act provisions governing AFDC eligibility. They have held that persons who are arguably included in the federal eligibility standard must be deemed eligible unless the Act or its legislative history clearly exhibits an intent to exclude them from coverage, in effect creating a presumption of coverage when the statute is ambiguous (Citation omitted). This departure from ordinary principles of statutory interpretation is not supported by the Court's prior decisions. King, Townsend, and Carleson establish only that once the federal standard of eligibility is defined, a participating State may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional. The method of analysis used to define the federal standard of eligibility is no different from that used in solving any other problem of statutory construction.

Burns v. *Alcala,* ——U.S.——, 43 L. Ed. 2d 469, 475 (1975). The Court in *Burns* instead supported the principle that "words used in a statute are to be given their ordinary meaning in the absence of persuasive reasons to the contrary." *Id.* at 475; *Banks* v. *Chicago Grain Trimmers Assn., Inc.,* 390 U.S. 459, 465, 20 L. Ed. 2d 30, 36 (1968). It has also been said that "[t]echnical words which have a definite and well-understood meaning will be presumed to have been used in that sense in the absence of surrounding circumstances or context which show that a different meaning was intended." *In Re Norman's Estate,* 209 Minn. 19, 26, 295 N.W. 63, 66 (1940). In that case, the Minnesota Supreme Court found that the word "foster" has a "significance

which cannot be overlooked." 209 Minn. at 25; 295 N.W. at 66. In deciding whether a child was "adopted" for purposes of inheritance, the court turned to several well-accepted authorities:

> In Webster's New International Dictionary, 2d Ed., 1935, "foster" is thus defined: "Affording, receiving, or sharing nourishment, nurture, or sustenance, *though not related by blood* or, • • • by ties of nature, • • • or the like. . . .
>
> And see definition in Funk & Wagnall's Standard Dictionary: "Foster, to provide with food; nourish; rear; aid; encourage; fosterage — the care of a foster sister, foster brother . . . one considered as holding the relationship indicated *in consequence of nursing and rearing, though not related by blood.*" 209 Minn. at 25-26; 295 N.W. at 66.

Acceptance of this definition by the United States Supreme Court is implicit in *Burns* v. *Alcala,* ——U.S.——, 43 L. Ed. 2d 469 (1975), which concerned the eligibility of an unborn child to receive AFDC benefits. In denying payments to this group of recipients, the Court stated:

> The restricted purpose of the AFDC program is evidenced in the Act itself by the limitations on aid. The Act originally authorized aid only for children living with designated relatives. The list of relatives has grown . . . but there is still no general provision for AFDC payments to needy children living with distant relatives or unrelated persons, or in institutions. ——U.S.——, 43 L. Ed. 469, 476 (1975).

The Court then added in a footnote:

> The Act now authorizes, in addition to payments for children in the homes of designated relatives, foster care payments for children who have been removed from the homes of relatives. 42 USC § 608. *Id.* at 476 n. 9.

Both the Illinois statute and the Social Security Act, upon which the Illinois statute is based, classify only two groups of aid recipients — one composed of parents and relatives, and the other consisting of child-care institutions and strangers who provide foster care. These categories are compatible with the commonly accepted meaning of the term "foster child." Thus, plaintiffs are in error in stating that "Illinois should make foster care payments to its wards living with related foster parents, as the federal law requires." (Plaintiffs' brief, p. 12).

The fact that "[t]wo of the three federal district courts that considered the question . . . found the state schemes violated the Social Security Act and the Supremacy Clause" is inconclusive. (Plaintiffs' brief, p. 37) Plaintiffs place particular reliance on *Clampett* v. *Madigan,* No. Civ. 73-4018 D. S. Dak. (S. Div. 5-24-73) where the District Court of South Dakota found a conflict between the stated purpose of the Social Security Act and the South Dakota foster care regulations which, like those of Illinois, made foster care payments only to strangers caring for needy children. The court's determination was based in good part on the purpose of AFDC as stated in § 601 of the AFDC provisions — to help maintain and strengthen family life. While there is no denial by the defendants that the regular AFDC program is designed specifically to promote this purpose, it is totally unrealistic to attach a similar purpose to the separate AFDC-FC provisions (42 U.S.C. § 608) which, as previously discussed, were intended to solve the serious problems emerging from the inability to strengthen family life. In contrast to this finding by the single-judge court in *Clampett,* the three-judge court below agreed that the purpose of § 608 was to expand coverage to include unrelated foster care. The weight to be accorded to the decision of the latter three-judge court is unquestionably superior. (*See Moody* v. *Flowers,* 387 U.S. 97, 101, 18 L. Ed. 2d 643, 647 (1967).

Similarly, the recent Program Instruction issued by the Department of Health, Education and Welfare (APA-PI-75-9, Oct. 25, 1974) is misleading. As plaintiffs indicate in their brief, HEW adopts the position that "the Illinois policy of denying foster care AFDC benefits for children living with relatives is invalid because it conflicts with specific criteria for eligibility set forth in the Social Security Act; . . ." (Plaintiffs' brief, p. 26) While the Court regularly resorts for guidance to the rulings interpretations and opinions of the agency responsible for the administration of the Social Security Act, the Court on numerous occasions has refused to accept HEW regulations where they were inconsistent with the federal statute. *Burns* v. *Alcala,* ——U.S.——, 43 L. Ed. 2d 469 (1975); *Townsend* v. *Swank,* 404 U.S. 282, 30 L. Ed. 2d 448 (1971); *King* v. *Smith,* 392 U.S. 309, 20 L. Ed. 2d 1118 (1968). In *Burns* v. *Alcala,* the Supreme Court refused to acquiesce in HEW's long-standing administrative practice of allowing states to include unborn children as eligible for aid.

It should also be noted that the official regulations promulgated by HEW are contained in C.F.R., and not in informal Program Instructions issued to state agencies which administer state welfare plans. It is clear that this unofficial statement by HEW is not only inconsistent with the Social Security Act, but it appears to be in direct contradiction with its previous policy[11] that parents and related persons are eligible for benefits under AFDC, while any other indi-

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11. *See,* letter from acting regional commissioner of HEW dated March 10, 1971, Supp. pp. A26-28.

vidual and voluntary institutions are eligible under AFDC-FC. While the HEW regulations do not expressly make this distinction, the mutual exclusion of each category is inherent throughout the regulations. (See 45 C.F.R. 233.90(c)(1)(v)(B) (1 and 2); 45 C.F.R. 233.90(c)(2)(i); 45 C.F.R. 233.110(a)(2)(ii) and (iii)). For example, the AFDC program is covered by § 233.90, which provides that dependent children living with certain relatives are entitled to federal aid. It is noteworthy that within that same section the home of such relative is considered eligible under AFDC, even though the child is under the jurisdiction of the court or under the custody of a state agency while living in the home of the relative. (§ 233.90(c)(1)(v)(B) 1 and 2.) This regulation has direct application to the instant case, where the children cared for by plaintiffs are under the court's supervision and under the custody of the Illinois Department of Children and Family Services. The AFDC-FC program is separately regulated under § 233.110, and provides that aid will be given in the form of foster care to an eligible child who was removed from the home of a relative specified in the above AFDC regulation. The repeated use of the terms "foster family home" and "child care institution" as one unit throughout § 233.110 leaves the unmistakable impression that HEW has in the past treated these entities separately from regular AFDC recipients, which includes the relatives of dependent children.

From the above, it is evident that plaintiffs, who are related to the needy children for whom they care, are simply not foster parents and are not entitled to foster care benefits under AFDC-FC (42 U.S.C. § 608).

It is respectfully submitted that for the foregoing reasons the Illinois statutory foster care scheme is consistent with the purpose and meaning of the Social Security Act and cannot, therefore, violate the Supremacy Clause of the United States Constitution.

II.

THE ILLINOIS STATUTORY FOSTER CARE SCHEME COMPLIES WITH THE REQUIREMENTS OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Introduction

The Fourteenth Amendment of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws". In its most basic sense the prohibition contained in this Amendment goes no further than invidious discrimination. *Morey* v. *Doud*, 354 U.S. 457, 463, 1 L. Ed. 2d 1485, 1490 (1957) citing *Williamson* v. *Lee Optical*, 348 U.S. 483, 489, 99 L. Ed. 563, 573 (1955). Plaintiffs argue that the Illinois welfare scheme which results in greater monetary assistance benefits to children living in unrelated homes than to children living in the homes of relatives constitutes an invidious discrimination against the latter class of children. It is respectfully submitted that the Illinois welfare scheme which results in the aforementioned allocation of welfare funds does not constitute invidious discrimination, but rather bears a rational relationship to legitimate legislatively articulated state purposes, and, therefore, complies with the mandate of the equal protection clause.[12]

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12. *Cf. Weinberger* v. *Wiesenfeld*, —— U.S. ——, 43 L. Ed. 2d 514, 525 N. 16 (1975); *Jimenez* v. *Weinberger*, 417 U.S. 628, 41 L. Ed. 2d 363 (1974).

A. The Three-Judge District Court Properly Employed The Traditional "Minimum Scrutiny, Rational Relationship" Standard Of Equal Protection Review.

This Court in *Morey* v. *Doud,* 354 U.S. 457, 1 L. Ed. 2d 1485 (1957) in a case involving the validity of the Illinois Community Currency Exchanges Act summarized the rules for testing a discrimination under the Fourteenth Amendment Equal Protection Clause as follows:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." (354 U.S. at 463-64, 1 L. Ed. 2d at 1490).

Likewise, these fundamental rules expressed in *Morey* v. *Doud, supra,* have application in the area of economics and social welfare legislation. A state does not violate the equal protection clause simply because the classifications made by its welfare laws are imperfect. *Dandridge* v. *Williams,* 397 U.S. 471, 485, 25 L. Ed. 2d 491, 501 (1970)

> To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. The administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished human beings. We recognize the dramatically real factual difference between the cited cases and this one, but we can find no basis for applying a different constitutional standard. (Citation omitted) It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. (Citation omitted) And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy. *Dandridge* v. *Williams,* 397 U.S. at 485-86, 25 L. Ed. 2d at 502.

In *Jefferson* v. *Hackney,* 406 U.S. 535, 32 L. Ed. 2d 285 (1972) this Court continued this approach to equal protection challenges to social welfare legislation saying "[s]o long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and needy are not subject to a constitutional straitjacket" (406 U.S. at 546, 32 L. Ed. 2d at 296), and ultimately held that "Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is [not] invidious or irrational" (406 U.S. at 549, 32 L. Ed. 2d at 297).

In reviewing the instant case, the three-judge district court employed the standard of review referred to as follows:

> We turn now to the equal protection question. A state statute dealing with social welfare need only be rationally based and free from invidious discrimination. Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). Since the statutes challenged here fall within the category governed by the *Dandridge* rule, *their validity depends upon whether the distinction between related and unrelated foster parents is based on differences that are reasonably*

related to the legitimate purposes of the foster care program. (*Youakim* v. *Miller*, 374 F. Supp. 1204, 1207-08 (1974)) (emphasis added)

It is respectfully submitted that the three-judge district court employed the proper equal protection test, and that its application to the cause at hand must necessarily result in a finding that the distinction between related and unrelated foster parents is based on differences that are reasonably related to the legitimate purposes of the foster care program.

1. The Illinois Welfare Scheme Is Based Upon Legitimate Legislatively Articulated State Purposes, And The Allocation Of Available Welfare Funds Bears A Rational Relationship To The Legitimate State Purposes Upon Which The Program Is Grounded.

The Illinois welfare scheme which affords greater monetary assistance benefits to unrelated families providing foster care than to relatives caring for dependent children is grounded upon several recognized legitimate state purposes, and the allocation of available welfare funds has a rational relationship to the advancement of those purposes.

The primary purpose of the Illinois Department of Children and Family Services is to provide "social services to children and their families". Ill. Rev. Stat. 1971, ch. 23, § 5001. In providing these services the Department is duty bound to (1) prevent, remedy, or assist in the solution of problems which may result in the neglect, abuse, or exploitation of children; (2) protect and care for homeless, dependent or neglected children; (3) protect and promote the welfare of children, including the strengthening of their own families and counseling of family members; (4) provide adequate care of children away from their homes, where needed, in foster family homes or day care or other

child care facilities; and (5) provide counseling for mentally retarded, physically and socially handicapped children and their parents. Ill. Rev. Stat. 1971, ch. 23, § 5005. It is clear beyond question, therefore, that the avowed purpose of the Illinois legislation creating the Department of Children and Family Services is the protection and care of *all* of the state's neglected and homeless children, and that purpose is superimposed upon all other considerations. Moreover, this purpose has been recognized as a legitimate state concern, *Ramos* v. *Montgomery*, 313 F. Supp. 1179, 1181 (S.D. Cal. 1970) aff'd 400 U.S. 1003, 27 L. Ed. 2d 618 (1971) and one which is the paramount goal of the AFDC program. *King* v. *Smith*, 392 U.S. 309, 325, 20 L. Ed. 2d 1118, 1130 (1968).[13]

The three-judge district court, properly perceiving that the purpose of caring for neglected and homeless children must permeate state policy, correctly observed that the Illinois General Assembly "could reasonably have been concerned about how to use available public funds to provide as many foster homes as possible."[14] *Youakim* v. *Miller*,

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13. It should be noted that in *Ramos* v. *Montgomery*, while the district court recognized that "[t]he family structure has been and remains the cornerstone of our society [;] [m]ore important even is the overall interest of the public in the protection of the child," (313 F. Supp. at 1181) and this Court in *King* v. *Smith*, observed that "protection of such children is the paramount goal of AFDC." (392 U.S. at 325, 20 L. Ed. 2d at 1130).

14. Plaintiffs' characterization of this state interest as speculative at page 44 of their brief is simply without merit. The purpose of providing as many suitable foster homes as possible is completely consistent with the overall purpose of promoting the welfare of all the needy children

374 F. Supp. at 1208. Since such a state of facts are reasonable, given the limited amount of funds available for the program, the three-judge district court quite correctly ruled that they existed at the time the Illinois law was enacted. *Morey* v. *Doud,* (354 U.S. at 464, 1 L. Ed. 2d at 1490).

This Court in *Dandridge* v. *Williams* held that,

> Given Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family. . . .
>
> *The strong policy of the statute in favor of preserving family units does not prevent a State from sustaining as many families as it can,* . . . (397 U.S. at 479-80, 25 L. Ed. 2d at 499). (Emphasis added)

This statement in *Dandridge* is a clear recognition that a state may validly allocate welfare resources to provide as many homes as possible for homeless and neglected children even though such a plan may provide more limited resources to some children than others.

In this case, logic and established precedent require the conclusion that more homes will be provided for neglected children through the present allocation of Illinois welfare resources. The more resources made available for unrelated foster care, the greater the likelihood of obtaining foster parents who would otherwise have no particular

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of the state. (*See* Ill. Rev. Stat. 1971, ch. 23, § 5005). Likewise the plaintiffs' statement that "the District Court inferred that the state's interest in strengthening the family unit is of lesser importance than the care of children generally" at page 45 of their brief is unfair. The court in actuality balanced the two interests and found that the state may have reasonably concluded that the greater good for the greater number of children in need of foster homes is served by the classification made. *Youakim* v. *Miller,* (374 F. Supp. at 1208)

reason for caring for unrelated neglected children. The problems attendant to caring for an unknown foster child are varied and serious.

> Foster children indeed are "children at risk." (9:226) Katz studied the dynamics of children placed in foster homes and found guilt, anger and depression to be prominent. (5:295-299) The anger tended to generate anxiety, which led to provocative testing behavior. Some children were unable to respond to the affection of the foster parents, in order to avoid suffering another separation. According to Maluccio, children in foster care experienced identity crises and feelings of loss and helplessness and their negative behavior seemed to put the foster family under stress unless the family was sensitive to the feelings and needs of the child. (6:69-74) (Child Welfare, Vol. LII, Number 2, Feb., 1973, p. 84).[15]

The very real dangers involved in becoming a foster parent reasonably warrant the conclusion that a monetary incentive will increase the likelihood that individuals not related by family bonds will assume these burdens in caring for unknown neglected children.

It is argued by plaintiffs, however, that all of the burden attaching to unrelated foster care, likewise occurs when care is rendered in the home of a relative, and therefore, resources ought to be allocated on the same basis. This position is not entirely reasonable. A relative is certainly more likely to know a child for whom he or she is caring, and therefore, is less likely to encounter the personality

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15. The article (A Foster Home For Crisis Placements) from which this quotation was taken was written by John F. Simonds, M.D. a child psychiatrist. Xerox copies of the complete article were mailed to the Court on August 12, 1975.

problems described in Dr. Simonds' article, or be better able to handle the problems encountered because of a familiarity with the child.[16] Moreover, while it is true as plaintiffs point out that children cared for by relatives have basically the same medical, nutritional and clothing requirements as children cared for by unrelated foster parents, it is not true that unrelated foster parents, absent a monetary incentive, will be as willing to provide care for the unrelated children living with them as would a relative, who does so out of a sense of familial obligation. This fact is borne out in plaintiffs' own complaint. Plaintiffs allege in paragraph 25 of their Second Amended Complaint (App. 10-11) that "[p]laintiff related foster parents are informed and believe that they are providing their foster son Timothy with foster care of a quality equal to or better than the care he has received and would receive from foster parents unrelated to him". Plaintiffs then recite in paragraphs 25 (a) (b) and (c) that the basis for their "belief" is that they have expended their own funds to correct Timothy's breathing difficulty. Similar allegations are made with regard to Mary Lou—the second related child living with the Youakims. (*See* App. 11, Paras. 26, 26 (a), (b), (c)). These unselfish acts are certainly praiseworthy and commendable. Similarly, they bear out the sense of family spirit perceived by the state on behalf of relatives caring for related children which has permitted the State of Illinois to make more money available to secure qualified un-

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16. Plaintiffs' complaint supports the state's contention that unknown foster children are more likely to present problems than are related children. In paragraphs 23 and 24, plaintiffs allege that Mary Lou, the related child who lives with them, was considered to have a "behavior" problem when living with foster parents, but is well-adjusted since living in the home of relatives. (App. 10)

related foster parents. This in turn makes it more likely that a sufficient number of homes will be available and supports the three-judge court's conclusion that, "[t]his classification, the wisdom of which is not for us to determine, bears a rational relationship to the legitimate purpose of attempting to assure that foster homes are made available."[17] *Youakim* v. *Miller*, 374 F. Supp. at 1208.

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17. The three-judge district court's opinion in *Ramos* v. *Montgomery*, [illegible] F. Supp. 1179 (S.D. Cal. 1970) aff'd. 400 U.S. 1003, 27 L. Ed. 2d 618 (1971) certainly supports the proposition that a reduction in foster care assistance for the purpose of providing increased assistance to relatives would result in a threat to the entire foster care program. Although that case involved the claim of natural parents rather than relatives, its rationale is equally applicable here. There the court said,

> Foster parents perform many intangible services for their foster children. Natural parents have a moral, if not a legal obligation to perform those services. The labors of cooking, washing, ironing clothes, cleaning house, etc., not to mention the time and patience needed to aid in the development of the child's character are all necessary aspects of his support. To provide these services foster parents must give up much of their privacy in daily affairs.
>
> Some children must of necessity be placed in foster homes due to the financial inability of the parents to provide a suitable home. If such parents were to receive the same aid per child as foster parents receive there is no doubt that they could do a better job in supporting their children. Nevertheless, to give them that additional aid from appropriated funds would result in an overall reduction in money available for foster home care. A reduction in foster home care aid would threaten the continued existence of the entire program and jeopardize the welfare of thousands of children. (313 F. Supp. at 1183).

The three-judge district court properly observed that there was an additional rational basis for the classification in question.

> A consideration of the consequences of eliminating the classification which plaintiffs challenge will identify another rational basis for it. The payments which are the subject of this litigation are intended to subsidize care for children who have been adjudicated wards of the state. It is manifest that there are many children in Illinois whose natural parents are deceased but who, without being adjudicated wards of the state, are cared for by relatives who are their legal custodians, guardians, or perhaps even adoptive parents. Certainly the state has an interest in encouraging its citizens to care for related minors who have been orphaned by the death of their parents, either by adopting them, accepting the responsibilities of guardianship, or even merely taking informal custody of such minor children without having them adjudicated wards of the state. If the plaintiffs' attack on the Illinois program were sustained, relatives would have a financial inducement to cause orphaned children to be adjudicated wards of the state in order to qualify themselves for foster care payments. The state may rationally conclude that such a financial motivation would contravene the policy of the laws relating to adoption and guardianship. (*Youakim* v. *Miller*, 374 F. Supp. at 1209-10 n. 5).

Furthermore, subjecting a child to a court proceeding which labels the child a ward of the state where such a procedure is apparently unnecessary can never be in the best interest of the child, and certainly the result of such a proceeding leaves an emotional scar upon the individual involved.[18]

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18. The plaintiffs are apparently in complete agreement with this position since on page 40 of their brief it is said that, "[a] certain opprobrium inevitably attaches to the children as a result of this process." Notwithstanding the "opprobrium" plaintiffs apparently would approve a program which would encourage relatives to subject the children for whom they care to such a process.

Yet the end product of an acceptance of the plaintiffs' position will provide a monetary incentive to every person who cares for a child related to him to have that child adjudicated a ward of the state. Such a probability certainly contravenes the state's interest in encouraging its citizens to care for related minors without having them adjudicated wards of the state, and runs contrary to the welfare of the children involved.

It should also be observed at this point that an acceptance of plaintiffs' position may result in a denial of equal protection to relatives caring for related children without an intervening court adjudication. If plaintiffs are successful in this case, they, as relatives caring for related children, will be entitled to the higher AFDC-FC assistance benefits, while relatives who care for related children who have not been adjudicated wards of the state and who are entitled to welfare assistance will only be eligible for the lower AFDC assistance benefits. This is true, of course because the Illinois program, which parallels §608 of the Social Security Act requires a court adjudication for AFDC-FC eligibility. It is submitted that a court adjudication declaring a child a ward of the state is not a proper reason for discriminating between two otherwise like classes of relatives caring for children related to them. This, however, is the anomalous result produced by an acceptance of plaintiffs' contentions.

It is, therefore, again respectfully submitted that the three-judge district court correctly applied the traditional

"minimum scrutiny" test and properly found that the classification contained in the Illinois welfare scheme is based upon differences that are reasonably related to the legitimate purpose of the foster care program.

B. This Case Does Not Require The Application Of A More Stringent Standard Of Equal Protection Review.

While it is true, as plaintiffs suggest, that this Court has examined more closely classifications involving inherently suspect groups or protected fundamental rights, *Loving* v. *Virginia,* 388 U.S. 1, 18 L. Ed. 2d 1010 (1967); *Sugarman* v. *Dougall,* 413 U.S. 634, 37 L. Ed. 2d 853 (1973); *Shapiro* v. *Thompson,* 394 U.S. 618, 22 L. Ed. 2d 600 (1969) this case plainly does not require the application of such a standard of review.

1. Plaintiffs Are Not Members Of An Inherently Suspect Class.

This Court observed in *Frontiero* v. *Richardson,* 411 U.S. 677, 36 L. Ed. 2d 583 (1973) that "classifications based upon . . . race, alienage, and national origin are inherently suspect and must therefore be subjected to close judicial scrutiny." (411 U.S. at 682, 36 L. Ed. 2d at 589) and concluded that the same considerations apply to classifications based upon sex. (411 U.S. at 688, 36 L. Ed. 2d at 592). This case obviously does not involve any of the previously mentioned inherently suspect groups and for that reason alone plaintiffs' argument that close scrutiny be given this classification should be rejected.

The plaintiffs next argue at page 41 of their brief that "[t]he Court has given close scrutiny to statutes which discriminate against illegitimate children" even though

illegitimates are not an inherently suspect group. Several cases[19] are then cited in support of an unuttered analogy between illegitimates and the needy children involved in this case. While the cases cited support the proposition that this Court will afford illegitimates considerable protection, the holdings have no application here. First, the unjust social opprobrium which attaches to an illegitimate child cannot honestly be compared with the problems of the needy children involved in this case. Illegitimates have for centuries been subjected to injustice, ridicule, and scorn. No such similar historical fate has befallen the class of children involved in this case. Next, the cases cited by plaintiffs involved a denial of benefits to a class of children because of their status as illegitimates. In the present case, as indicated in Argument I of this brief, plaintiffs are not denied assistance commensurate with the state-established standard of need,[20] they simply are not given the premium Illinois pays to attract foster parents.

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19. *Levy* v. *Louisiana,* 391 U.S. 68, 20 L. Ed. 2d 436 (1968); *Weber* v. *Aetna Casualty & Surety Co.,* 406 U.S. 164, 31 L. Ed. 2d 768 (1972); *Griffin* v. *Richardson,* 346 F. Supp. 1226 (D. Md. 1972) aff'd. 409 U.S. 1069, 34 L. Ed. 2d 660 (1972); *Davis* v. *Richardson,* 342 F. Supp. 588 (D. Conn. 1972) aff'd. 409 U.S. 1069, 34 L. Ed. 2d 659 (1972); *Gomez* v. *Perez,* 409 U.S. 535, 35 L. Ed. 2d 56 (1973); *New Jersey Welfare Rights Organization* v. *Cahill,* 411 U.S. 619, 36 L. Ed. 2d 543 (1973); *Jimenez* v. *Weinberger,* 417 U.S. 628, 41 L. Ed. 2d 363 (1974).

20. The plaintiffs rely, in great part, on *Williams* v. *Wohlgemuth,* 366 F. Supp. 541 (W.D. Pa. 1973) to support their equal protection argument. This case has no direct application to the instant one for the following reasons. In *Williams,* the Pennsylvania scheme involved two basic classifications of persons eligible for assistance: (1) children

It is, therefore, respectfully submitted that the classification made by the Illinois welfare scheme does not involve an inherently suspect group nor does it lend itself to comparison with classifications of illegitimate children.

2. The Illinois Welfare Scheme Does Not Violate A Fundamental Right.

The plaintiffs admit at pages 42 and 43 of their brief that there is no recognized "fundamental interest" involved in this case, but assert that the right of family association is so basic as to require treatment similar to those instances where fundamental interests are involved.

At the outset it should be pointed out that the right of family association is not the precise right plaintiffs have

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living with relatives and (2) children living with non-relatives. The second class, children living with non-relatives was further sub-divided into two classes: (1) children living with non-relatives who were, themselves, receiving public assistance, and (2) children living with non-relatives who were not, themselves, receiving public assistance. The second sub-class, children living with non-relatives, who were not, themselves, receiving public assistance was flatly denied eligibility because the person with whom they lived was not eligible to receive assistance regardless of the child's need. (366 F. Supp. at 545). It was this flat denial of eligibility based upon the custodian's ineligibility which resulted in a denial of equal protection rather than the relationship of the child to the custodian. As previously indicated, all needy children are eligible for assistance without regard to the custodian's eligibility under the Illinois scheme.

It is also interesting to note that the classification found "invidious" in *Williams* favored relatives and discriminated against a sub-class of non-relatives; just the opposite of the situation involved here.

attempted to assert. Rather they have attempted to enforce an alleged right to welfare funds above the Illinois established standard of need. As previously indicated, there is no fundamental right to welfare funds above such an established standard, nor do cases involving claims to welfare funds require stricter judicial scrutiny. *Dandridge* v. *Williams*, 397 U.S. 471, 25 L. Ed. 2d 491 (1970); *Jefferson* v. *Hackney*, 406 U.S. 535, 32 L. Ed. 2d 285 (1972).

In support of their position plaintiffs cite *Levy* v. *Louisiana*, 391 U.S. 68, 20 L. Ed. 2d 436 (1968) and *Stanley* v. *Illinois*, 405 U.S. 645, 31 L. Ed. 2d 551 (1972) and conclude at pages 42-43 of their brief that "[i]n *Levy* and *Stanley* the Court recognized and deferred to the warm, deep and enduring relationship between parent and child. In *Youakim* the relationship between brother and sister is similarly warm, deep and enduring..." It is ironic that plaintiffs would analogize the relationship between parent and child to relative and child, here, to establish the violation of an alleged fundamental right, but deny the existence of the same relationship when tendered by the state to show that relatives, like natural parents, will care for related children because of "warm, deep and enduring" feelings. In *Ramos*, it was these same feelings which justified a disparity in welfare payments between natural parents and unrelated foster parents. If this same relationship which exists between parent and child is shared by a relative and child as plaintiffs suggest, and the state agrees, then *Ramos* has direct application to the instant case, and no fundamental interest of plaintiffs has been denied.[21]

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21. The court in *Ramos* recognized that if natural parents were to receive the same amount of aid as foster parents, it would be more likely that they could keep the family together. However, the Court approved the welfare scheme despite the existence of this fact.

It should also be observed at this point that the administrative scheme employed by Illinois endeavors to alleviate any incidental strain which may be placed upon the family relationship as a result of the present allocation of welfare funds. As noted by the three-judge district court in *Youakim,* "[i]n addition to the AFDC payments, some foster families in which the parents and children are related receive additional funds from the Social Service Administration up to the amount of foster care payments, if the Department of Children and Family Services makes a determination of need." (374 F. Supp. at 1206). This exception to the general practice, the opinion goes on to point out, is referred to in the CFS placement manual, (App. 36-37) and at the time this suit was commenced approximately 140 of the 1500 related foster families in Illinois received this extra allowance. (374 F. Supp. at 1206). In fact, the plaintiffs in this case were found eligible for additional assistance pursuant to the exception policy enunciated by the three-judge court on September 1, 1974. (See the xeroxed materials mailed to the Court on August 12, 1975.)

It is once again respectfully submitted that the Illinois welfare scheme does not violate a fundamental interest of plaintiffs, and further that it includes an administrative procedure designed to alleviate any incidental strain placed upon family ties by its operation.

CONCLUSION

For the foregoing reasons Defendants-Appellees respectfully urge this Court to affirm the judgment of the three-judge district court, which granted Defendants-Appellees' motion for summary judgment.

Respectfully submitted,

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APPENDIX

SUPPLEMENT

42 U.S.C. § 601:

§ 601. Authorization of appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87-543, Title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90-248, Title II, § 241(b)(1), 81 Stat. 916.

42 U.S.C. § 602(a) provides in pertinent part:

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must

• • •

(7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income;

• • •

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals;

• • •

(19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is—

(i) a child who is under age 16 or attending school full time;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) a mother or other relative of a child under the age of six who is caring for the child; or

(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;

42 U.S.C. § 603(a)(1)(B):

§ 603. Payment to States; computation of amounts; Federal share of assistance payments; social and supportive services; appropriation; family planning services and supplies; reduction of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to section 1320b of this title) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal

to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

• • •

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month:

42 U.S.C. § 605:

§ 605. Use of payments for benefit of children

Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 606(b)(2) of this

title, or in seeking appointment of a guardian or legal representative as provided in section 1311 of this title, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 604 of this title and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

Aug. 14, 1935, c. 531, Title IV, § 405, 49 Stat. 629; July 25, 1962, Pub. L. 87-543, Title I, § 107(a), 76 Stat. 188.

42 U.S.C. § 606:

§ 606. Definitions

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

Aug. 14, 1935, c. 531, Title IV, § 406, 49 Stat. 629; Aug. 10, 1939, c. 666, Title IV, § 403, 53 Stat. 1380; Aug. 28, 1950, c. 809, Title III, Pt. 2, § 323(a), 64

Stat. 551; Aug. 1, 1956, c. 836, Title III, §§ 321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87-543, Title I, §§ 104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88-641, § 2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89-97, Title IV, § 409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90-248, Title II, §§ 201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 380, 893, 916.

42 U.S.C. § 608:

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f)(1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading

to such determination were initiated, or (B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor;

(b) the term "aid to families with dependent children" shall, notwithstanding section 606(b) of this title, include also foster care in behalf of a child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 603(a)(1) of this title for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and

(d) services described in paragraph (f)(2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a)(3) of this title;

but only with respect to a State whose State plan approved under section 602 of this title—

(e) includes aid for any child described in paragraph (a) of this section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title, and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section 722(a) of this title (relating to allotments to States for child welfare services under sections 721 to 728 of this title) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

Aug. 14, 1935, c. 531, Title IV, § 408, as added May 8, 1961, Pub. L. 87-31, § 2, 75 Stat. 76, and amended July 25, 1962, Pub. L. 87-543, Title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)-(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub. L. 90-248, Title II, §§ 201 (e)(4), 205(c), 81 Stat. 880, 892.

45 C.F.R. § 233.90(c)(1)(v):

§ 233.90 Factors specific to AFDC.

• • •

(c) *Federal financial participation.* (1) Federal financial participation under title IV-A of the Social Security Act in payments with respect to a "dependent child", as defined in section 406(a) of the Act, is available within the following interpretations:

• • •

(v) *"Living with [a specified relative] in a place of residence maintained • • • as his • • • own home".* (A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:

(1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(2) Stepfathers, stepmother, stepbrother, and stepsister.

(3) Persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(4) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(B) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be "living with" his relative even though

(1) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or

(2) Legal custody is held by an agency that does not have physical possession of the child.

45 C.F.R. § 233.90(c)(2):

§ 233.90 Factors specific to AFDC.

• • •

(c) *Federal financial participation.*

• • •

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC;

(ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis;

(iii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC; and

(iv) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency situations that deprive the child of the care of the relative through whom he has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

45 C.F.R. § 233.110:

§ 233.110. AFDC foster care

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act must:

(1) Provide that aid will be given in the form of foster care for each otherwise eligible child:

(i) Who was removed after April 30, 1961, from the home of a relative specified in the AFDC plan, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare, for any reason, and who has been placed in foster care as a result of such determination; and

(ii) (a) Who, in or for the month in which that court action was initiated, was receiving AFDC, or would have received AFDC if application had been made, or

(b) Who lived with a relative specified in the AFDC plan within 6 months prior to the month in which that court action was initiated, and who would have received AFDC in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made for him; and

(iii) Whose placement and care are the responsibility of the State agency administering or supervising the administration of the AFDC plan, or, if the State so elects, are the responsibility of any other public agency, or type or types of pub-

lic agencies specified in the plan, with whom the State agency has a currently effective agreement that provides for development of a plan satisfactory to the State agency for AFDC-FC children in accordance with subparagraph (2) of this paragraph and that contains other provisions necessary to achieve the objectives of the State's AFDC plan.

(2) Provide for development of a plan for each child described in subparagraph (1) of this paragraph, so that:

(i) He will be placed in a foster family home or a child care institution in accordance with his needs;

(ii) His need for and the appropriateness of his care and services in such placement will be reviewed not less frequently than every 6 months;

(iii) Services will be provided to improve the conditions in the home from which he was removed or to make possible his placement in the home of another relative under the State's AFDC plan. (See § 220.19 of this chapter.)

(3) Provide that maximum use will be made of the services of employees of the State public welfare agency responsible for the plan for child-welfare services under title IV-B of the Act or of any local agency participating in the administration of such plan.

(4) Specify:

(i) In what types of child care institutions (private nonprofit, or public, or both), in addition to foster family homes, placement will be made; and

(ii) Whether payments will be made to foster homes and institutions only or also to other agencies.

(5) Provide that there will be specific criteria for determining the amount of payment for foster care in foster family homes and in child care institutions. In establishing rates of payment to institutions, only those items included for care in foster family homes will be included, and overhead costs of the institution will be excluded.

Under the requirements of this paragraph, provision must be made for both foster family care and institutional care in accordance with the individual child's needs; public institutions may be used, without Federal financial participation, to discharge the institutional obligation in whole or in part; and the use of institutions outside the State will also meet the requirement for the provision of institutional care.

(b) *Federal financial participation.* (1) Federal financial participation is available, effective January 1, 1968, in AFDC-FC payments not to exceed an average of $100 per month per recipient, made on behalf of children as specified in section 403 of the Social Security Act, who are included in the approved State AFDC plan and who are placed in a foster family home, or nonprofit private child-care institution, licensed or approved by the agency which is responsible for licensing or approval of such facilities in the State where it is situated. The maximum of $100 average per month per recipient may be disregarded when the State claims Federal funds under the provisions of section 1118 of the Act.

(2) Federal financial participation is available in AFDC-FC payments made to an individual providing care in a foster family home, to a private nonprofit child care institution, or to a cooperating public or nonprofit private child placement or child-care agency. [36 F.R. 3869, Feb. 27, 1971]

Ill. Rev. Stat. 1971, ch. 23, § 4-1.2:

§ 4-1.2. Living Arrangements—Parents—Relatives—Foster Care)

The child or children must (1) be living with his or their father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, or other relative approved by the Illinois Department, in a place of residence maintained by one or more of such relatives as his or their own home, or (2) have been (a) removed from the home of the parents or other relatives by judicial order under the "Juvenile Court Act", approved August 5, 1965,[1] as amended, (b) placed under the guardianship of a county superintendent of public aid or the principal administrative officer in the Division of Child Welfare of the Department of Children and Family Services, and (c) under such guardianship, or other guardianship authorized prior to the effective date of this 1969 Amendatory Act, placed in a foster family home or child care institution licensed pursuant to the "Child Care Act", approved July 10, 1957, as amended,[2] or approved by that Department as meeting standards established for licensing under that Act. A child so placed in foster care who was not receiving aid under this Article in or for the month in which the court proceedings leading to that placement were initiated may qualify only if he lived in the home of his parents or other relatives at the time the proceedings were initiated, or within 6 months prior to the month of initiation, and would have received aid in and for that month if application had been made therefor.

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1. Chapter 37, § 701-1 et seq.
2. Chapter 23, §§ 2301 to 2329.

The conditions of qualification herein specified shall not prejudice aid granted under this Code for foster care prior to the effective date of this 1969 Amendatory Act.

Amended by P.A. 76-1199, § 1, eff. Sept. 4, 1969.

Ill. Rev. Stat. 1971, ch. 23, § 2212.05:

§ 2212.05 Facility for child care defined]

§ 2.05 "Facility for child care" or "child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children.

Ill. Rev. Stat. 1971, ch. 23, § 2212.17:

§ 2212.17 Foster family home and types of homes, defined]

§ 2.17. "Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis. The family's own children, under 18 years of age, shall be included in determining the maximum number of children served. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois authorized to provide care for children outside their own homes. The types of foster family homes are defined as follows:

(a) "Boarding home" means a foster family home which receives payment for regular full-time care of a child or children.

(b) "Free home" means a foster family home other than an adoptive home which does not receive payments for the care of a child or children.

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(d) "Work-wage home" means a foster family home which receives a child or children who pay part or all their board by rendering some services to the family not prohibited by the Child Labor Law[1] or by standards or regulations of the Department prescribed under this Act. The child or children may receive a wage in connection with the services rendered the foster family.

(e) "Agency-supervised home" means a foster family home under the direct and regular supervision of a licensed child welfare agency, of the Department of Children and Family Services, of a circuit court, or of any other State agency which has authority to place children in child care facilities, and which receives no more than 8 children, unless of common parentage, who are placed and are regularly supervised by one of the specified agencies.

(f) "Independent home" means a foster family home, other than an adoptive home, which receives no more than 4 children, unless of common parentage, directly from parents, or other legally responsible persons, by independent arrangement and which is not subject to direct and regular supervision of a specified agency except as such supervision pertains to licensing by the Department.

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1. Chapter 48, § 31.1 et seq.

Ill. Rev. Stat. 1971, ch. 37, § 701-2:

§ 701-2. Purpose and Policy.]

(1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should be given by his parents, and in cases where it should and can properly be done to place the minor in a family home so that he may become a member of the family by legal adoption or otherwise. (2) In all proceedings under this Act the court may direct the course thereof so as promptly to ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern, not only for the rights of the parties, but also for the fears and the limits of understanding of all who appear before the court. (3) This Act shall be liberally construed to carry out the foregoing purpose and policy.

Ill. Rev. Stat. 1971, ch. 23, § 5001:

§ 5001. Purpose.] § 1. The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act.

Ill. Rev. Stat. 1971, ch. 23, § 5005:

5005. Direct child welfare services.]

§ 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

For purposes of this Section:

The term "children" means persons found within the State who are under the age of 18 years at the time of acceptance for service or care. The term also includes children under age 18 and children age 18 or more but under age 21 who (1) are in foster care under order of a court and (2) were, at any time before August 1, 1969, recipients of foster care under Sections 6-4 or 12-8.6 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.[1]

The term "child welfare services" means public social services which supplement or substitute for parental care and supervision for the purpose of: (1) preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse or exploitation of children; (2) protecting and caring for homeless, dependent or neglected children; (3) protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members; (4) providing adequate care of children away from their homes, where needed, in foster family homes or day care or other child care facilities; or (5) providing counseling for mentally retarded, physically, and socially handicapped children and their parents when not otherwise available.

The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to the children requiring such services.

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1. Chapter 23, §§ 6-4, 12-18.6.

For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop a comprehensive day-care plan for the State which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources. A written plan shall be submitted to the Governor, annually, on January 1, and shall include an evaluation of developments over the preceding year, including cost-benefit analyses of various arrangements.

(2) The Department shall conduct day care planning activities within the following priorities:

(a) development of voluntary day care resources wherever possible, with the provision for grants-in-aid only where demonstrated to be useful and necessary as incentives or supports;

(b) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(c) maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs;

(d) care of children from families in stress and crises whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(e) expansion of family day care facilities wherever possible;

(f) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(g) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction.

(3) Based on its planning activities, the Department shall actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

(4) Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

The Department shall establish rules and regulations concerning its operation of programs established to meet these purposes, including but not limited to adoption, foster care, family counseling, protective services, service to unwed mothers, homemaker service, return of runaway children, and interstate services.

The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of the Department. The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose grants are allowed where the child

requires special service but such costs may not exceed the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

The Department shall accept for care and training any child who has been adjudicated neglected or dependent committed to it pursuant to the "Juvenile Court Act".[2] The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent or as a minor in need of supervision, under the "Juvenile Court Act", but no such child shall be committed to the Department by any court without the approval of the Department.

The Department may assume temporary custody of any child (1) if it has received a written consent to such temporary custody signed by the parents of the child or by the parent having custody of the child if the parents are not living together or by the guardian or custodian of the child if the child is not in the custody of either parent or (2) if the child is found in the State and neither a parent, guardian nor custodian of the child can be located. The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to Section 1-12 of the "Juvenile Court Act".[3] A parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may

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2. Chapter 37, § 701-1 et seq.

3. Chapter 37, § 701-12.

cause to be filed a petition pursuant to the "Juvenile Court Act". If a petition is so filed, the Department shall retain temporary custody of the child until the court orders otherwise. If a petition is not filed within the 10 day period, the child shall be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate. The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average percapita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section.

The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such childen are or may become en-

titled while under the jurisdiction or care of the Department.

Amended by P.A. 76-2041, § 1, eff. July 1, 1970; P.A. 77-1374, § 1, eff. Aug. 31, 1971.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

REGION V

433 WEST VAN BUREN STREET, ROOM 712
CHICAGO, ILLINOIS 60607

March 10, 1971

SOCIAL & REHABILITATION SERVICE

Mr. Gordon Watters, Chief

Division of Program Development
Department of Public Aid
209 West Jackson Blvd., Room 602
Chicago, Illinois 60606

Dear Mr. Watters:

This responds to your letter of October 19, 1970 asking whether Federal financial participation is available in payments under the AFDC program to relatives within the relationship specified in Section 406(a) of the Social Security Act.

Federal participation would not be available in such payments. Title IV of the Federal Act distinguishes between AFDC and AFDC Foster Care by providing (1) for assistance in behalf of needy children living with specified relatives and (2) for assistance under specified circumstances on behalf of children removed from the home of a specified relative and placed in a foster family home or child-care institution.

Even if the Federal Act permitted Federal matching, Illinois statutes seem to preclude a relative's home being considered a foster home. Section 2217.17 of State law defines a foster family home as a "facility for child care in residences who receives no more than 8 children *unrelated* to them . . . on a fulltime basis" (emphasis supplied). This definition is consistent with the traditional concept of a foster home in the child welfare field under which there is a distinct difference between a foster home and the home of a relative.

We wish to note that relatives caring for a child for whom they have no legal responsibility cannot be held responsible for any part of that child's living expenses. Therefore, the assistance grant must include all items in the State standards for AFDC that are included when a child lives with his parents or other needy relative. Only when the non-needy relative with whom he is placed freely contributes any of the requirements, may such contribution be considered as available in determining the amount of the payment. (See Program Regulation 20-7, CFR 233.20(a)(3)(ii)(c).

We question that your manual instructions make this policy entirely clear. For example. Section 1008.6 states, "an allowance to enable the recipient to pay his share of the total rent to a relative with whom he is living requires supervisory approval related to an evaluation of the total social and economic factors." This could be interpreted to mean that budgeting shelter cost for a child living with a self-supporting relative would be an exception to the general rule. The policy undoubtedly leads workers to assume income (contribution of shelter and other joint household expenses) in AFDC cases as well as in assistance to recipients in the adult categories. It should be modified and clarified to assure that budgeting practice does not assume income that is not actually available.

Many States have established a room and board standard plus clothing and personal incidental standard allowances for AFDC assistance to children living with self supporting relatives. This has the advantage of eliminating inquiry into the circumstances of the relative. Although such a standard might not equal the foster care rate, it would be more nearly comparable and reasonable; and it would be consistent with policy as stated in Handbook Section IV 3435.3 on the subject of AFDC children in "Homes with Relatives other than Parents." If such a standard is established it must apply in *all* cases in which children are living with non-needy relatives other than parents.

You also asked if the Department of Children and Family Services could pay a relative for care and supervision of the child recipient without affecting the AFDC grant. As long as there is no claim for Federal financial participation in such a payment and DCFS is able to make such payments under State law, no question would be raised. In effect, this would be income for the relative and not for the child.

We hope that these comments will be helpful to you in reconsideration of budgeting policy for children living with relatives other than their parents.

Sincerely yours,

/s/ EDWARD J. SIENICKI,
Acting Regional Commissioner,
SRS